

Linda F. Cantor (CA Bar No. 153762)
Jason S. Pomerantz (CA Bar No. 157216)
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, California 90067
Telephone: 310-277-6910
Facsimile: 310-201-0760
E-mail: lcantor@pszjlaw.com

Counsel for Weneta M. A. Kosmala, Chapter 7 Trustee for
The Tulving Company, Inc.

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re:

THE TULVING COMPANY, INC., a California corporation,

Debtor.

Case No.: 8:14-bk-11492-ES

Chapter 7

**TRUSTEE'S RESPONSE TO MOTION TO
OPT OUT OF THE ERROR COIN
DISTRIBUTION IN LIEU OF CASH
DISTRIBUTION**

Hearing:

Date: October 12, 2017

Time: 10:30 a.m.

Place: 411 West Fourth Street
Courtroom 5A
Santa Ana, CA 92701

Weneta M.A. Kosmala, the duly appointed and acting chapter 7 trustee (“Trustee”) in the above-captioned case of The Tulving Company Inc. (the “Debtor”), hereby files her response to the *Motion to Opt-Out of the Error Coin Distribution in Lieu of Cash Distribution* [Dkt. No. 708] (the “Opt-Out Motion”) filed by creditor Igor Pavlovsky, and respectfully represents as follows:

I.

DISCUSSION

The Trustee's professionals are in the process of distributing Error Coins to Victim/Creditors as requested by the Trustee and as authorized by the Court.¹ Victim/Creditors who did not wish to receive Error Coins were required to fill out an "opt-out" form and return it to the Trustee. Victim/Creditors who did not expressly and timely opt-out of receiving their allocated Error Coins are deemed, by default, to have opted-in.²

As noted in the Opt-Out Motion, in February 2016, Mr. Pavlovsky notified the Trustee's professionals of his wish to "opt-out" of receiving Error Coins in connection with an asset distribution plan which had been approved by the prior trustee and the Government. However, that distribution plan was found to be untenable as it was premised on a valuation later determined to be incomplete and faulty.³ Therefore, in October 2016, the Trustee requested and obtained a Court order authorizing her to modify the prior distribution plan, retain coin valuation experts, and set a new opt-out deadline for the receipt of Error Coins.⁴ Following the completion of the new coin valuation by Professional Coin Grading Service, the Trustee filed and served the Distribution Motion which explained in detail the new distribution schedule, notified Victim/Creditors of their allocated Error Coins and provided an opportunity to opt-out of receiving Error Coins by July 3, 2017. Mr. Pavlovsky did not do so.

There are 376 Victim/Creditors in this case. Thirty (30) of those Victim/Creditors determined to opt-out of receiving Error Coins in 2016 under the prior asset distribution plan (the “Initial Opt-Out Parties”). In response to the Distribution Motion and Distribution Order, only

¹ See Motion for Order (I) Approving Coin Valuations and Distribution Schedule of Error Coins to Victim/Creditors, and (II) Granting Related Relief Pursuant to Sections 105 and 363 of the Bankruptcy Code filed June 1, 2017 [Dkt. No. 667] (the “Distribution Motion”) and the Order thereon entered July 25, 2017 [Dkt. No. 689] (the “Distribution Order”).

² Distribution Order at paragraph 4.

³ Debtor respectfully requests that the Court take judicial notice of the pleadings in this Case pursuant to Federal Rule of Evidence 201.

⁴ See Application to Employ GreatCollections.com as Auctioneer Notice Of Motion And Motion For Order Authorizing The Trustee To (I) Retain GreatCollections.Com D/B/A Great Collections As Auctioneer, (II) Modify, In Part, Asset Distribution Plan, And (III) Set New Opt-Out Deadline For Creditors To Determine Whether To Receive Error Coins In Partial Payment Of Their Claims And Sell Coins Not Distributed To Creditors Free And Clear Of Liens, Claims And Interests dated September 1, 2016 [Dkt. No. 623] and Order thereon dated October 12, 2016 [Dkt. No. 634].

1 eleven (11) of the Initial Opt-Out Parties failed to notify the Trustee's professionals of their opt-in /
2 opt-out determination (the "Subject Victim/Creditors"). Mr. Pavlovsky is one of those eleven
3 Subject Victim/Creditors.

4 While the Trustee believes that full and adequate notice (and a detailed explanation) of the
5 revised distribution plan and opt-out deadline were provided to all Victim/Creditors, the Trustee
6 appreciates that there may have been some confusion among the Subject Victim/Creditors that their
7 prior opt-out determination was not applicable to the new opt-out deadline set under the
8 Distribution Order. Therefore, only with respect to the Subject Victim/Creditors, and subject to
9 approval by the Court, the Trustee will agree to enter into a stipulation to allow the Subject
10 Victim/Creditors to opt-out of receiving Error Coin under the following terms:

11 The Subject Victim/Creditor must provide written notice to the Trustee's professionals that
12 (i) they do not wish to receive their allocated Error Coins, and (ii) acknowledge that it is possible
13 that such Subject Victim/Creditor might not receive any other form of distribution out of this
14 bankruptcy estate. Such notice may be in the form of Exhibit B to the Distribution Motion sent to
15 each Subject Victim Creditor.⁵ Notice of a Subject Victim/Creditor's opt-out determination must
16 be given to the Trustee's professional either (a) prior to the delivery of their Error Coins, or (b) no
17 later than five (5) days after receiving their Error Coins. Finally, if the Subject Victim/Creditor has
18 already received their Error Coins and wishes to return them, they must certify that they are
19 returning the same Error Coins that were shipped to them. The foregoing terms will be
20 incorporated into a stipulation which will be presented to the Court for approval.

21 By the Opt-Out Motion and the opt-out notice appended as Exhibit D to the Opt-Out
22 Motion, Mr. Pavlovsky has provided notice of his intent to opt-out of receiving his Error Coins and
23 he has acknowledged that it is possible that such Subject Victim/Creditor might not receive any
24 other form of distribution out of this bankruptcy estate. The Error Coins allocated to Mr. Pavlovsky
25 were not shipped pending determination of the Opt-Out Motion, so there are no coins to return.
26 Provided that the Court approves the Opt-Out Motion, the Trustee will have authority to dispose of

27
28 ⁵ See Exhibit B to Distribution Motion [Dkt. 667].

1 the Error Coins that had otherwise been allocated to Mr. Pavlovsky as described in the Distribution
2 Motion. In the alternative, the Trustee is agreeable to enter into a stipulation with Mr. Pavlovsky
3 under the terms set forth above.

4 **II.**

5 **CONCLUSION**

6 WHEREFORE, under the circumstances, the Trustee does not oppose the Opt-Out Motion.

7 Dated: September 28, 2017

8 PACHULSKI STANG ZIEHL & JONES LLP

9 By /s/ Linda F. Cantor
10 Linda F. Cantor

11 Counsel for R. Weneta M.A. Kosmala, Chapter
12 7 Trustee of The Tulving Company, Inc.

1 **PROOF OF SERVICE OF DOCUMENT**

2 I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

3

4 A true and correct copy of the foregoing document **TRUSTEE'S RESPONSE TO MOTION TO OPT**
5 **OUT OF THE ERROR COIN DISTRIBUTION IN LIEU OF CASH DISTRIBUTION** will be
6 served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and
7 (b) in the manner stated below:

8 **1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling
9 General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the
10 document. On **September 28, 2017**, I checked the CM/ECF docket for this bankruptcy case or adversary
11 proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF
12 transmission at the email addresses stated below:

13 Service information continued on attached page

14 **2. SERVED BY UNITED STATES MAIL:**

15 On **September 28, 2017**, I served the following persons and/or entities at the last known addresses in this bankruptcy
16 case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail,
17 first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the
judge will be completed no later than 24 hours after the document is filed.

18 Service information continued on attached page

19 **3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL**
20 (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **September 28,**
21 **2017**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who
22 consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here
23 constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24
24 hours after the document is filed.

25 **Via Legal Vision Messenger on September 29, 2017**
26 The Honorable Erithe A. Smith
United States Bankruptcy Court - Central District of
California
Ronald Reagan Federal Building and Courthouse
411 West Fourth Street, Suite 5040 / Courtroom 5A
Santa Ana, CA 92701-4593

27 **Via electronic mail to igor.pavlovsky@yahoo.com**
28 Igor Pavlovsky
150 W. Superior 701
Chicago, IL 60654

29 Service information continued on attached page

30 I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

31 September 28, 2017

32 Janice G. Washington

33 /s/Janice G. Washington

34 Date

35 Printed Name

36 Signature

1 **1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

2 Wesley H Avery on behalf of Consumer
3 Privacy Ombudsman Wesley H Avery
4 wamiracle6@yahoo.com,
wavery@rpmlaw.com

5 Jason S Pomerantz on behalf of Trustee R.
6 Todd Neilson (TR)
7 jspomerantz@pszjlaw.com,
8 jspomerantz@pszjlaw.com

9 Candice Bryner on behalf of Interested Party
10 Candice Bryner
11 candice@brynerlaw.com

12 Nanette D Sanders on behalf of Creditor
13 Levon Gugasian
14 becky@ringstadlaw.com

15 Philip Burkhardt on behalf of Other
16 Professional Karen Duddlesten
17 phil@burkhardtandlarson.com,
18 stacey@burkhardtandlarson.com

19 Richard C Spencer on behalf of Interested
20 Party Courtesy NEF
21 rspencer@rspencerlaw.com

22 Stephen L Burton on behalf of Attorney
23 Stephen L. Burton
24 steveburtonlaw@aol.com

25 United States Trustee (SA)gov

26 Frank Cadigan on behalf of U.S. Trustee
27 United States Trustee (SA)
28 frank.cadigan@usdoj.gov

29 Linda F Cantor, ESQ on behalf of Other
30 Professional Pachulski Stang Ziehl & Jones
31 LLP
32 lcantor@pszjlaw.com, lcantor@pszjlaw.com

33 Linda F Cantor, ESQ on behalf of Trustee R.
34 Todd Neilson (TR)
35 lcantor@pszjlaw.com, lcantor@pszjlaw.com

36 David L Gibbs on behalf of Creditor Kenneth
37 W Stach
38 david.gibbs@gibbslaw.com,
39 ecf@gibbslaw.com

40 Nancy S Goldenberg on behalf of U.S. Trustee
41 United States Trustee (SA)
42 nancy.goldenberg@usdoj.gov

43 Lawrence J Hilton on behalf of Creditor
44 Jeffrey Roth
45 lhilton@oneil-llp.com, ssimmons@oneil-
46 llp.com;kdonahue@oneil-llp.com

47 John H Kim on behalf of Creditor Ford Motor
48 Credit Company LLC
49 jkim@cookseylaw.com

50 R. Todd Neilson (TR)
51 tneilson@brg-expert.com, sgreenan@brg-
52 expert.com;tneilson@ecf.epiqsystems.com;ntr
53 oszak@brg-expert.com

1 **2. SERVED BY UNITED STATES MAIL**

2 Weneta M. Kosmala Law Offices
3 3 MacArthur Pl # 760
4 Santa Ana, CA 92707

Counsel for Creditor Levon Gugasian

Nanette D. Sanders, Esq.
Ringstad & Sanders LLP
2030 Main Street
Suite 1600
Irvine, CA 92614

5 Debtor
6 The Tulving Company Inc.
7 2049 Century Park East, Suite 2525
8 Los Angeles, CA 90067-3225

Harlene Miller, Esq.
Harlene Miller Law
17910 Sky Park Circle, Suite 105
Irvine, CA 92614

7 Counsel for Debtor
8 Andrew S Bisom
9 The Bisom Law Group
10 8001 Irvine Center Drive, Suite 1170
11 Irvine, CA 92618

On the Rocks Jewelry & Rare Coins
Attn: David Halpin and Desirea Sloan
207 N. El Camino Real
San Clemente, CA 92672

10 James F. Wyatt, III
11 Wyatt & Blake, LLP
12 435 East Morehead Street
13 Charlotte, NC 28202

Richard P. Foelber
Chief, Office of Cooperative Enforcement
U.S. Commodity Futures Trading
Commission
1155 21st Street, NW
Washington, DC 20581

14 Laurence P Nokes on behalf of Interested
15 Party John Frankel
16 Nokes & Quinn
17 410 Broadway St Ste 200
18 Laguna Beach, CA 92651

19 Kevin Zolot
20 Assistant U.S. Attorney
21 United States Attorney's Office
22 Western District North Carolina
23 227 West Trade Street
24 Charlotte, NC 28202

25 Benjamin Bain-Creed
26 Assistant United States Attorney
27 Florida Bar #0021436
28 Suite 1650, Carillon Building
29 227 West Trade Street
30 Charlotte, North Carolina 28202

31 Accountants for Landlord
32 Brent Murdoch
33 Murdoch & Morris, LLP
34 114 Pacifica, Ste. 320
35 Irvine, CA 92618

36 Interested Party
37 Frye & Hsieh
38 Douglas J Frye Esquire
39 24955 Pacific Coast Highway # A201
40 Malibu, CA 90265